

STATE OF NEW MEXICO
COUNTY OF MCKINLEY
ELEVENTH JUDICIAL DISTRICT COURT

JEREMY GAY, as the Wrongful Death Personal
Representative of the ESTATE OF RODNEY LYNCH
and RHONDA LYNCH, INDIVIDUALLY,

Plaintiffs,

vs.

D-1113-CV-2020-00359

JUSTIN OLVERA, in his individual capacity,
ELIJAH BOWMAN, in his individual capacity,
NICOLA MARTINEZ-COLLINS, in her individual
capacity, CITY OF GALLUP, a Municipal
Corporation of the State of New Mexico, and
GALLUP POLICE DEPARTMENT, ACTING CHIEF OF POLICE,
FRANKLIN BOYD,

Defendants.

DEPOSITION OF BILLY PADAVICH

May 5, 2021

1:20 p.m.

210 South Second Street
Gallup, New Mexico 87301

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE this deposition was:

TAKEN BY: WILLIAM R. KEELER, ESQ.

REPORTED BY: KIM KAY SHOLLENBARGER, RPR
NEW MEXICO CCR#236
PAUL BACA PROFESSIONAL COURT REPORTING
500 4th STREET, NORTHWEST, SUITE 105
ALBUQUERQUE, NEW MEXICO 87102

Exhibit "E"

1 A. I couldn't. I don't know where they were in the
2 facility. What I'm referencing to is camera 29, when I'm
3 looking at the video, it's labeled camera 29, and then
4 there's one labeled camera 32.

5 **Q. Did you watch those videos?**

6 A. I did. On camera 29 and camera 32, there's different
7 views. The one that I really concentrated on was camera 32,
8 because it gave me a better view, a better angle for me.
9 Mr. Olvera is motioning Mr. Lynch to come out of the van.
10 And reading his transcript, it's like, come on, man, come on,
11 man, come on, sir, come out of the van.

12 **Q. Let me stop you there. When you say, "transcript," was
13 there a recording of what he was saying, Olvera?**

14 A. There was no open mic. So there was no mics on
15 anybody. Neither Officer Bowman, nor Officer Olvera, they
16 did not have their mics on, so you could not hear. You could
17 see motions, and what I am describing to you is out of a
18 transcript.

19 **Q. Should they have had their microphones on?**

20 A. Absolutely. So Mr. Lynch is sitting there and he
21 swings his legs out and he started to get out. How I'm
22 viewing the video, it looks like Olvera is going to go to
23 like an escort position, and it looks like at that time
24 Mr. Lynch is coming out and Olvera goes to grab -- to get him
25 to escort. And it looks like, to me, that Mr. Lynch throws

1 to grab Mr. Lynch in an escort, and it was a -- and there was
2 an arm that was raised, the threat that Mr. Olvera perceived
3 was that he was going to hit him. So would taking somebody
4 down to the ground be appropriate at that point for that part
5 of use of force, yes, it would be.

6 **Q. Continuing with him on the ground and Mr. Bowman
7 jumping on the back of him, was Mr. Bowman's actions
8 appropriate?**

9 A. No, no, we do not teach that in our defensive tactics
10 class. We are taught that we work -- in defensive tactics
11 you're taught in a controlled area, but when you get out to
12 the street it's a little bit different, things are sort of
13 uncertain, they're evolving, they're dynamic. But we are
14 taught that if you go to the ground like that and you get in
15 that position, you've got to get to a better position. You
16 can't lay on one's back. The reason being is, you want to
17 try to work one side of the body. This happens with
18 wrestlers all the time, they get their chest on the back of
19 somebody, they sprawl out, but they rotate one side, and
20 that's to get an advantage. So that is what is sort of
21 taught through defensive tactics, that you could end up
22 there, but you cannot stay there, that's not a defensive
23 tactics that we teach.

24 **Q. In terms of Mr. Olvera's position, what did you think
25 of it?**

1 his arm up like, hey, get off me, man. And at that point
2 when that happens, then Justin, and I believe PSO Bowman,
3 they go into the cage area, and then from there they go down
4 to the ground. When I say, "they," it's Justin Olvera,
5 Elijah Bowman and Mr. Lynch. When they land on the ground,
6 at this point Mr. Elijah Bowman is on the back of Mr. Lynch
7 and Mr. Olvera is to the front side of Mr. Lynch with
8 basically -- it looks like Mr. Lynch's head would be in sort
9 of his chest area, but on the opposite side, so just looking
10 towards detox, and Mr. Lynch would have been on the ground as
11 well but looking towards the PD facing north and south.

12 **Q. You mentioned that he shoed his arm away, did I
13 describe that correctly?**

14 A. Yeah. Like I said, the camera angle of 32, it looks
15 like Justin is going to go to an escort position to help out
16 of van, and when Mr. Lynch is coming, it looks like there
17 could have been contact, and it looked like Mr. Lynch was
18 like, hey, get off me, and that's when they both -- all three
19 went to the back of the panel van area, and then came down to
20 the ground.

21 **Q. Was the use of force they used on Mr. Lynch when he
22 shoed his arm away, was that appropriate?**

23 A. So at that point he's actively -- if one was to think,
24 and I'm going to go back to Justin Olvera. If Justin Olvera
25 felt that Mr. Lynch was coming back at him and he was going

1 A. In his, where he ended up, his position was, he
2 obviously was on the one side, you can see his left arm area.
3 The other, it's hard to see his right arm. But his left arm,
4 he's under Mr. Lynch's, that would be his right armpit, at
5 one point. He's there for seconds, and then he repositions
6 his arm from under the armpit that goes into the upper chest,
7 or possibly the neck area. It is hard to see on the video
8 where his right arm is.

9 **Q. Does that matter?**

10 MR. ISAACSON: Objection, form. You can answer.

11 **Q. (Mr. Keeler) Does it matter where the right arm is
12 positioned during that time that you're describing to us?**

13 A. It could, it could matter, because we don't know if
14 they're clenched. And I don't know if his arm is under his
15 belly or where it is or if it's clenched. Yeah, it would
16 matter in some point, or if it's on his side, if he's trying
17 to get up. But what caught my eye was the repositioning, and
18 the repositioning of his arm could be for many reasons. It
19 could be it was getting leaned on, it was hurting. He wasn't
20 in an area to hold onto the hands. He could have slipped the
21 hand, so Justin might have had to reposition, not knowing
22 where he repositioned his left arm at that point.

23 **Q. Continuing after the reposition, what caught your eye?**

24 A. What caught my eye was that Elijah Bowman was on his
25 back the whole time and he really wasn't -- he was trying to

1 control, but I think he was trying to keep him down on the
2 ground. Mr. Lynch was a big guy, like he was very strong.
3 With Elijah Bowman on his back, he was -- and Olvera to his
4 front, he was still planted and pushing himself up. Like he
5 was a very big, strong guy. But when I seen the left arm
6 reposition there was, seconds into the video, that they were
7 just in that position. And I see Mr. Lynch is trying, it
8 looks like maybe trying to get Justin's leg or the belt, and
9 Justin sprawls his legs out a little bit more and that's when
10 he transitions his arm. He stays in that position for over a
11 minute, but during that time I could see Mr. Lynch, after he
12 was trying to posture, to maybe push himself up, to go back
13 down. He had his hands under him, and I believe it would
14 have been his right hand, it looks like he's tapping the
15 ground.

16 **Q. Trying to tap out?**

17 MR. ISAACSON: Objection, form, foundation.

18 MR. BECKER: Join.

19 **Q. (Mr. Keeler) You can answer.**

20 A. To me it just looks like he's tapping, and then he
21 points. That's what I see in the video.

22 **Q. You didn't try to decipher it in any way?**

23 A. Not really, no. I seen what I seen in the video, and
24 he's tapping and it looks like he's pointing. Also when I'm
25 looking at that, I'm looking at, I believe, the detox

1 employees, and they're looking under. So I'm trying to
2 figure out, is he moving. And then obviously after a while
3 Sergeant Nicola Martinez and the other officers get on scene
4 and they're handcuffing him and they roll him over and
5 obviously at that point they realize that he is not
6 breathing. They take the handcuffs off of him and they start
7 CPR immediately.

8 **Q. Explain to me not within policy, you have that checked
9 in your report.**

10 A. Why not within policy is that, those are areas that you
11 don't want to be in. You can transition to a different
12 tactic to try to control someone. You can disengage. You
13 can call for an officer. There's no issues of retreating.

14 **Q. There's no issues of what?**

15 A. There would be no issues for us finding -- like if they
16 just retreated off and called for help, hey, come in and help
17 with this guy because he's a bigger guy and we can't control
18 him.

19 **Q. Let me ask you this, you indicated that Vincent Pete
20 used Bowman's phone to text Olvera to meet that they had a
21 204?**

22 A. Correct.

23 **Q. Is that correct?**

24 A. Correct.

25 **Q. Shouldn't they have radioed for a police officer to**

1 **meet them at the NCI as opposed to Mr. Olvera?**

2 A. Yes. Yes, that should have been over the radio. The
3 issue with Elijah Bowman calling Olvera, I believe was trying
4 deescalation so that Bowman didn't have to deal with him.
5 Maybe somebody different, a different face. I just don't
6 think that Olvera knew that that was going to transpire.

7 **Q. But regardless of what Bowman was trying to do in order
8 to deescalate a 204, he should have been calling a police
9 officer; is that correct?**

10 A. He should have called a police officer, yes.

11 **Q. Looking again at your report, you indicated that choke
12 holds are not authorized as a defensive tactic with the
13 Gallup Police Department, it is not taught by the defensive
14 tactics instructors within the Gallup Police Department. The
15 choke hold applied to Mr. Lynch is ruled to be excessive.
16 Can you explain why it was excessive.**

17 A. Well, one, we do not get on people's necks. Vascular
18 restraints or choke holds, they are not taught within the
19 Gallup Police Department and they are not within our policy
20 and they're just not taught by instructors, period.

21 **Q. There's been some questions asked about a
22 life-threatening situation. In your opinion, was this a
23 life-threatening situation to Mr. Olvera?**

24 A. No.

25 **Q. Going back to your report. PSO Justin Olvera is taught**

1 **in defensive tactics that there are options that you have,
2 disengagement and reevaluate the situation. Was that talking
3 about the retreat that you mentioned earlier?**

4 A. Yes.

5 **Q. How would that have worked?**

6 A. They could communicate with each other, meaning Justin
7 Olvera and Bowman. Bowman could say, "hey, let's disengage,
8 get off of his back, we're going to disengage." And
9 reevaluation meaning, can I reevaluate? I have Mace, I have
10 a baton, and I have radio. I can utilize either one of those
11 or call for backup.

12 **Q. I'm going to show you what has been marked as Exhibit
13 I. It has to do with the Response to Resistance Board
14 findings on Mr. Bowman. Go ahead and take a look at it.
15 Have you had a chance to review it?**

16 A. Yes, sir.

17 **Q. Do you recognize it?**

18 A. Yes, sir.

19 **Q. What is it?**

20 A. This is the rulings/findings for Mr. Elijah Bowman in
21 reference to IA-019-10.

22 **Q. Is that the case involving Mr. Lynch and Mr. Olvera at
23 the NCI complex?**

24 A. Yes, sir.

25 **Q. Can you read for us what it says.**

1 A. Yes. "After review of case IA-019-10, which included
2 interviews and video footage of an incident that took place
3 at the Gallup detox facility, I found that Elijah Bowman
4 needs remedial training in the area of defensive tactics.
5 Elijah Bowman was lying on the back of an individual, later
6 identified as Rodney Lynch, at the detox facility saying that
7 he was trying to gain control of Rodney Lynch's arms. It's
8 not taught in defensive tactics within the Gallup Police
9 Department to continually stay on one's back to gain control.
10 There are options such as work one side of the body at a
11 45-degree angle to gain control of an arm or of a hand, or to
12 disengage from the individual and reevaluate the situation.
13 Elijah Bowman isn't found to have used excessive force, but
14 Elijah had other options and failed to utilize those
15 options."
16 Q. Is that it?
17 A. Yes, sir.
18 Q. You completed a report on Olvera that we talked about.
19 You just read the report regarding Officer Bowman, that you
20 did. What happens after you complete the report, what do you
21 do with it?
22 A. These would go to the chief and he would review them as
23 well, and then they would go back to the IA Division.
24 Q. You're the head of the Board; is that correct?
25 A. That's correct, sir, yes.

1 Q. As the head of the Response to Resistance Board do you
2 collect the reports or do you just ask them to turn them in?
3 A. I ask them to turn them into me and then I get them
4 turned into the chief, and then the chief would give them to
5 IA. Or at that time I think I gave them to the IA.
6 Q. Once the Board has completed doing a report, what steps
7 are taken after that for the Board itself?
8 A. We are pretty much done at that point, unless the chief
9 or somebody else has questions for us.
10 Q. Did the chief or anybody have questions for you guys
11 after giving your reports?
12 A. No, I don't think he had any questions. He read over
13 our reviews and he also had a chance to watch the videos as
14 well, yes.
15 Q. There were no follow-ups with you or any of the other
16 Board Members?
17 A. No.
18 Q. I guess you close out your file at that point and move
19 on to something else?
20 A. For us, yes, we would close that out and we would be
21 done, because the New Mexico State Police would do all of the
22 rest of the investigation.
23 Q. Were you working this case anymore, besides just as a
24 Board Member for the Response to –
25 A. No, the only thing, every now and then the State Police

1 would reach out to me to get somebody else's number, but for
2 the criminal or IA, no, sir.
3 Q. So once you completed your reports and handed them into
4 IA for the Response to Resistance Board, you were done with
5 this case?
6 A. I was done, sir. I had nothing else to do with this
7 case.
8 MR. KEELER: I have no further questions. I'll pass
9 the witness.
10 EXAMINATION
11 BY MR. BECKER:
12 Q. You're captain, right? Captain Padavich now.
13 A. Yes, sir.
14 Q. My name is Robert Becker, I represent Justin Olvera. I
15 just want to ask you just a couple of questions.
16 A. Yes, sir.
17 Q. You said that my client was under Mr. Lynch's right
18 armpit when he was down on the ground at one point. He would
19 be to the left and at some point he's got his arm under his
20 right armpit?
21 A. It would be his left arm under his right armpit, sir,
22 yes.
23 Q. Nothing wrong with that, is there?
24 A. No, sir.
25 Q. And then you also testified that repositioning of the

1 arm could be for many reasons. There's nothing wrong with
2 repositioning the arm to gain some leverage, is there?
3 A. No, sir.
4 Q. When you say, "reposition the arm," which arm are you
5 referring to?
6 A. It would be Mr. Olvera's left arm.
7 Q. And if Mr. Lynch was trying to get Officer Olvera's,
8 either his belt area or his legs, there wouldn't be anything
9 wrong with sprawling out a little further away so he wouldn't
10 have access to that, would there be?
11 A. No, sir.
12 Q. That would be an appropriate tactic, just to move away
13 a little bit so he didn't have access to anything on his belt
14 or anything – or trying to get ahold of his legs?
15 A. Yes, sir, that would be correct, sir.
16 Q. Now, you indicated that at one point you saw, it looked
17 like, Rodney Lynch was tapping out. That's speculation on
18 your part, correct?
19 A. It's not speculation, it's just what I seen in the
20 video. I never said, "tapping out," sir.
21 Q. I think that's –
22 A. Tapping on the ground. I don't think I ever used
23 tapping out. I think I used tapping on the ground.
24 Q. And if he was tapping on the ground, we don't know why
25 he was doing that, do we?